IN THE HIGH COURT OF BOMBAY AT GOA

LETTER PATENT APPEAL NO. 1 OF 2007
IN
WRIT PETITION NO. 46 OF 2002

BASAVARAJ Y. HANNUR ... Appellant
Versus
THE TELECOM DIST. MANAGER AND ORS ... Respondents

Mr. Premanand Kholkar, Advocate for the Appellant.

Mr. J. Vaz, Advocate for Respondent nos. 1, 2 and 4.

Coram:- R.M.S. KHANDEPARKAR &
R. S. MOHITE, JJ.

Date:- 21st August, 2007

P.C.

Heard.

2. The appellant challenged Order dated 08.12.2006, passed in Writ Petition No.46/02, whereby the appellant has been denied the back wages while directing reinstatement of the appellant in the course of setting aside of the Order of the Tribunal.

3. The learned Counsel appearing for the appellant submitted that the appellant had made a categorical assertion before the Tribunal that the appellant was not gainfully employed after termination of service and that there was no challenge to the said statement.

4. Upon hearing the learned Advocate for the parties and upon perusal of the record, it is undisputed fact that when the appellant approached this Court by way of Writ Petition no. 46/02, it was not the case of the appellant that the appellant was not gainfully employed else where from

the time his services were terminated. Admittedly, there are no pleadings in that regard nor any material placed on record to show that the appellant was not gainfully employed for the relevant period. The contention that the appellant had made a solemn statement before the Tribunal that the appellant was not gainfully employed for the relevant period and that there was no challenge to the said statement, is not sufficient to draw a conclusion that the appellant was in fact, not gainfully employed during the relevant period. Undisputably, the appellant's services were terminated about twenty years prior to the filing of the petition before this Court. It cannot be believed that for twenty years, the appellant could survive without any source of income. Being so, mere statement that the appellant was not gainfully employed for the relevant period, cannot be accepted as a gospel truth. The employee claiming to be out of employment pursuant to his termination of services, has not only to plead that he was not gainfully employed during the relevant period but has to establish his claim by leading cogent evidence in that regard. For a period of about twenty years, it is unbelievable that the appellant could survive without any source of income. Admittedly, he has not disclosed any source of income from which he could survive after termination of his services. Being so, in the absence of any specific plea and further in absence of any evidence in support of such plea, no fault can be found in the Order whereby the appellant had been denied back wages. Observation has been made by the learned Single Judge "....it is not expected of the petitioner to have sat idle without being gainfully employed", in the impugned Order, which is clearly borne out from the record and does not warrant any interference in this Letter Patent Appeal.

5. As regards the next ground of challenge relating to continuity in service, undisputably, the appellant was not appointed in employment after following the due process of selection for appointment. There is a categorical assertion on the part of the respondent in the affidavit in reply that the appellant was not appointed on permanent basis and was a Casual

Labourer. Being so, the question of continuity in service does not arise at all. As there is no other point canvassed in the appeal, the appeal fails and deserves to be dismissed.

6. Hence the appeal is hereby dismissed with no Order as to costs.

R.M.S. KHANDEPARKAR, J.

R. S. MOHITE, J.

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